

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of)	WC Docket No. 15-264
)	
National Rural Utilities Cooperative Finance)	
Corporation and Atlantic Tele-Network, Inc.)	
)	
For Consent to Transfer Control of Licenses and)	
Authorizations)	

MEMORANDUM OPINION AND ORDER

Adopted: June 15, 2016

Released: June 15, 2016

By the Chief, Wireline Competition Bureau; Chief, International Bureau; Chief, Media Bureau; and Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act), the National Rural Utilities Cooperative Finance Corporation (CFC) and Atlantic Tele-Network, Inc. (ATN) filed a series of applications¹ seeking consent to the transfer of control from CFC to ATN of Commission licenses and authorizations held by the following companies: DTR Holdings, LLC (DTR); Vitelcom Cellular, Inc. d/b/a Innovative Wireless (VCI); Innovative Long Distance, Inc. (ILD); Virgin Islands Telephone Corporation d/b/a Innovative Telephone (Vitelco), the incumbent local exchange carrier (LEC) in the United States Virgin Islands (USVI); Caribbean Communications Corporation d/b/a Innovative Cable TV St. Thomas-St. John (Innovative Cable STT-STJ); and ICC TV, Inc. d/b/a CBS-TV2 (TV2) (collectively, Innovative Companies, and together with CFC and ATN, Applicants).² The Innovative Companies hold the Commission licenses and authorizations to serve the USVI³ listed in Appendix A.

2. On November 19, 2015, the Wireline Competition Bureau, International Bureau, Media Bureau, and Wireless Telecommunications Bureau released a Public Notice seeking comment on the

¹ 47 U.S.C §§ 214, 310(d). *See* National Rural Utilities Cooperative Finance Corporation and Atlantic Tele-Network, Inc. Consolidated Application for Consent to Transfer Control of Domestic and International Section 214 Authority, WC Docket No. 15-264 (filed Oct. 30, 2015) (Lead Application). In response to a request from the Commission, CFC and ATN filed additional information regarding Vitelco's broadband offerings, its hybrid fiber-coaxial (HFC) network, and the financing of that network. *See* Letter from Phil Marchesiello, Counsel to ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-264 (filed Mar. 10, 2016) (March 10 Supplement).

² The Innovative Companies include two additional companies, neither of which holds a Commission license or authorization: St. Croix Cable TV, Inc. d/b/a/ Innovative Cable TV St. Croix (Innovative Cable STX) and VI PowerNet LLC (VI PowerNet). *See* Lead Application, Attach. 1, Description of the Proposed Transaction, Public Interest Statement, and Related Requests and Showings, at 2 (Public Interest Statement).

³ The USVI consists of three main islands (St. Thomas, St. Croix, and St. John) as well as other minor islands.

proposed transaction.⁴ In response to the *ATN Public Notice*, we received no comments or petitions to deny the transaction.

3. We have carefully reviewed the record, including the supplemental information filed by the Applicants that we requested.⁵ Based on our analysis, we find that the likely public interest benefits of this transaction outweigh any potential public interest harms. Accordingly, we conclude that the transaction, on balance, serves the public interest, convenience, and necessity, and therefore we grant the transfer of control applications.

II. BACKGROUND

A. Description of the Applicants

1. ATN

4. ATN, a publicly-traded Delaware corporation, provides mobile and fixed wireless services in the USVI through its subsidiary, Choice Communications, LLC (Choice).⁶ Applicants state that ATN and its subsidiaries provide no other services in the USVI.⁷ Through various other operating subsidiaries, ATN provides international and domestic wireless and wireline voice and data services to retail residential and enterprise customers, including mobile wireless solutions, local exchange services, and broadband Internet access services (BIAS), as well as wholesale connectivity and related services to carrier customers.⁸ ATN also is the indirect owner and operator of terrestrial and submarine fiber optic transport systems domestically and internationally, including a fiber network serving the New York and New England region, a partial interest in the Americas II submarine cable connecting the U.S. mainland and the Caribbean region, and a submarine cable system linking Trinidad and Tobago, Suriname, and Guyana.⁹

5. According to Applicants, ATN is an experienced and financially-sound carrier focused on serving island-based, rural, and underserved markets with local management and a strategy focused on long-term investment.¹⁰ Applicants state that ATN has no controlling owner, but that Cornelius B. Prior, Jr., a U.S. citizen, owns approximately 28 percent of ATN's shares (ATN has no other ten percent or greater equity interest holders).¹¹

2. CFC, CAH, and the Innovative Companies

6. CFC is a privately-owned, tax-exempt, non-governmental cooperative financial institution that is owned by, and provides financing and credit support to, its members.¹² CFC's members are not-for-profit, consumer-owned rural electric cooperatives that supply electric power to approximately 42 million consumers across rural areas of the United States.¹³

⁴ *Applications Filed for the Transfer of Control of the Innovative Companies to Atlantic Tele-Network, Inc.*, Public Notice, 30 FCC Rcd 13328 (WCB, IB, MB, WTB 2015) (*ATN Public Notice*).

⁵ See *supra* note 1.

⁶ Public Interest Statement at 9-10.

⁷ *Id.* at 10.

⁸ *Id.* at 9-10.

⁹ *Id.* at 10.

¹⁰ *Id.* at 2.

¹¹ Lead Application at 5-6.

¹² Public Interest Statement at 4. CFC was incorporated under the District of Columbia Cooperative Association Act in April 1969 and is headquartered in Dulles, Virginia. *Id.*

¹³ *Id.* at 4.

7. CFC acquired control of the Innovative Companies and their USVI assets in 2010—and of their British Virgin Islands and St. Maarten assets in 2011—as part of a credit bid in bankruptcy court to satisfy, in part, the debts of the Innovative Companies’ former parent companies and ultimate owner.¹⁴ According to CFC, at the time of the acquisition, it had no intention to own the Innovative Companies over the long term.¹⁵ To own and operate the Innovative Companies and their affiliates, CFC created a holding company structure pursuant to which CFC is the sole member of Caribbean Asset Holdings, LLC (CAH), the holding company for CFC’s telecommunications and cable television businesses in the USVI.¹⁶ CAH is the sole member of DTR, which is a limited liability company organized to hold CAH’s interests in the USVI.¹⁷ DTR holds nearly all of the stock of each of the Innovative Companies (other than DTR itself).¹⁸

8. The Innovative Companies are U.S. based and provide incumbent local exchange, intrastate and interstate interexchange, international, commercial mobile radio, BIAS, and cable television services in the USVI.¹⁹ Vitelco provides local, exchange access, and domestic intrastate and interstate interexchange services to consumers and enterprises in the USVI.²⁰ It also provides Ethernet-based services to enterprises in the USVI.²¹ It holds four microwave licenses, one industrial/business pool license, one paging and radiotelephone license, and has a blanket domestic section 214 authorization.²²

9. Innovative Cable STT-STJ is the principal cable television operator on the islands of St. Thomas and St. John.²³ Innovative Cable STT-STJ offers basic, premium, and high-definition television programming, plus digital video recorder services.²⁴ Innovative Cable STT-STJ holds five cable television relay service (CARS) licenses and an antenna structure registration issued by the Commission.²⁵

10. TV2 is a cable television network and the CBS network affiliate in the USVI.²⁶ TV2 holds two CARS licenses issued by the Commission.²⁷

¹⁴ *Id.* at 4.

¹⁵ *Id.* at i.

¹⁶ *Id.* at 5-6. CAH also is the holding company for CFC’s communications businesses in the British Virgin Islands and St. Maarten. *Id.*

¹⁷ *Id.* at 6. DTR holds international section 214 authority issued by the Commission. *Id.*

¹⁸ *Id.* at 6. Research and Technology Park Protected Cell Corporation (RTPark PCC) owns or holds the rights to 0.5 percent of the shares of Innovative Cable STT-STJ, Innovative Cable STX, TV2, VCI, and VI PowerNet. RTPark PCC provides services and benefits to tenants of the University of the Virgin Islands Research and Technology Park, a research and technology park chartered by the USVI to promote economic development and technology industries in the USVI. *Id.* at 5 n.5. DTR holds the remainder of the stock in each of the Innovative Companies (other than DTR itself).

¹⁹ *Id.* at 2.

²⁰ *Id.* at 6.

²¹ *Id.* at 6.

²² *See* Appx. A.

²³ Public Interest Statement at 7.

²⁴ *Id.* at 7.

²⁵ *See* Appx. A.

²⁶ Public Interest Statement at 8.

²⁷ *See* Appx. A.

11. ILD provides interstate interexchange and international telecommunications services in the USVI.²⁸ ILD holds a blanket domestic section 214 authorization and relies on the international section 214 authority of DTR, its direct parent company.²⁹

12. VCI is a commercial mobile radio service carrier offering mobile voice and data services to approximately 4,500 customers in the USVI over its 2G/3G GSM network, which uses HSPA+ technology for data services.³⁰ It holds the radio communication licenses listed in the applications in Appendix A and international section 214 authority from the Commission.³¹

13. VI PowerNet LLC provides telephone equipment and BIAS via dedicated T1 lines, an HFC network, and digital subscriber line (DSL) networks (with downstream speeds ranging from 512 Kbps to 25 Mbps), plus dial-up Internet access to a small number of customers.³² Innovative Cable STX is the principal cable television operator on the island of St. Croix.³³ Innovative Cable STX offers basic, premium, and high-definition television programming, plus digital video recorder services.³⁴ Neither VI PowerNet nor Innovative Cable STX currently holds any licenses or authorizations issued by the Commission.³⁵

B. Description of the Transaction

14. As a result of the proposed transaction, ATN will assume control of the Innovative Companies, thereby gaining access to, among other assets: (1) Vitelco's HFC network and its USVI wireline subscribers; (2) the USVI cable operations and subscribers of Innovative Cable STT-STJ and Innovative Cable STX, and (3) VCI's mobile wireless network, its approximately 4,500 mobile wireless subscribers, and its wireless spectrum.³⁶ To effectuate the transaction, ATN established ATN VI Holdings, LLC, a Delaware limited liability company created to acquire CFC's interest in CAH.³⁷ Applicants state that "ATN will pay CFC approximately \$145 million, subject to potential adjustments, with \$85 million payable in cash and the option for ATN to finance up to \$60 million of the purchase price with a loan from CFC's affiliate, Rural Telephone Finance Cooperative."³⁸ According to Applicants, consummation of the transaction is subject to regulatory approval by the Commission, the USVI Public Service Commission, and the Governments of the British Virgin Islands and St. Maarten, as well as U.S. antitrust clearance.³⁹

²⁸ Public Interest Statement at 8.

²⁹ See Appx. A.

³⁰ Public Interest Statement at 8-9.

³¹ See Appx. A.

³² Public Interest Statement at 9.

³³ *Id.* at 7.

³⁴ *Id.* at 8.

³⁵ *Id.*

³⁶ *Id.* at 6-8.

³⁷ *Id.* at 12.

³⁸ *Id.*

³⁹ *Id.* Applicants state that they have received consents for the proposed transaction from the regulatory authorities in the British Virgin Islands and St. Maarten. Letter from Phil Marchesiello, Counsel to ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 15-264, at 1-2 (filed May 11, 2016). Applicants further state that the review by the USVI Public Service Commission is pending. *Id.* at 2 (citing *Consolidated Application for Transfer of Control of Innovative Telephone, Innovative Cable TV St. Thomas-St. John and Innovative Cable TV St. Croix*, PSC Docket No. 653 (Virgin Islands Pub. Svc. Comm'n. 2015). On February 2, 2016, the U.S. Department of Justice (DOJ) granted early termination of its pre-merger review of this transaction under the Hart-Scott-Rodino

(continued....)

III. DISCUSSION

A. Standard of Review

15. Pursuant to sections 214(a) and 310(d) of the Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity.⁴⁰ In making this determination, we assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.⁴¹ If the transaction does not violate a statute or rule, then we consider whether the transaction would result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.⁴² We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁴³ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁴⁴

16. The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition, accelerating private sector deployment of advanced services, promoting a diversity of information sources and services to the public, and generally managing the spectrum in the public interest.⁴⁵ Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.⁴⁶ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁴⁷

17. The Commission's competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁴⁸ The Commission and the DOJ each has independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of control of Commission licenses, but the

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Antitrust Improvement Act of 1975. Federal Trade Commission, Early Termination Notices, File No. 20160407: Atlantic Tele-Network, Inc.; National Rural Utilities Cooperative Finance Corporation (Feb. 2, 2016), https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices?combine=national+rural&field_date_value%5bvalue%5d%5bdate%5d=&date_filter%5bmin%5d%5bdate%5d=January+5%2C+2016&date_filter%5bmax%5d%5bdate. Our review of the applications filed with the Commission does not affect other independent governmental reviews of the proposed transaction, nor do we intend for any finding in this Memorandum Opinion and Order to pre-judge other independent governmental consideration of matters under applicable law or precedent, which may differ from our standard of review.

⁴⁰ 47 U.S.C. §§ 214(a), 310(d).

⁴¹ See *Applications of AT&T Inc. and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40, para. 18 (2015) (*AT&T/DIRECTV Order*); *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 7 (2011).

⁴² See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9140, para. 18 (and cases cited therein).

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.* at 9140, para. 19.

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See *id.* at 9140, para. 20 (and cases cited therein).

standards governing the Commission's competitive review differ from those applied by the DOJ.⁴⁹ The Commission, like the DOJ, considers how a transaction would affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies that may result from the transaction.⁵⁰

18. The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁵¹ The DOJ review is consequently limited to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.⁵² Moreover, the Commission's competitive analysis under the public interest standard is broader. For example, the Commission considers whether a transaction would enhance, rather than merely preserve, existing competition, and has taken a more expansive view of potential and future competition in analyzing that issue.⁵³

B. Applicants' Qualifications

19. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.⁵⁴ In general, when evaluating transfers of control under section 310(d), we do not re-evaluate the qualifications of the transferor.⁵⁵ Exceptions to this rule occur where, for example, issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁵⁶ The Commission has not designated any issues related to this transaction for hearing, and no commenters raised concerns regarding CFC's qualifications in the record. We therefore need not evaluate CFC's basic qualifications.

20. Section 310(d) also requires that the Commission consider the qualifications of the transferee as if it were applying for licenses directly under section 308 of the Act.⁵⁷ Among the factors that the Commission considers in its inquiry is whether the transferee has the requisite "citizenship, character, and financial, technical, and other qualifications."⁵⁸

⁴⁹ See, e.g., *id.*

⁵⁰ See *id.* at 9140-41, para. 20.

⁵¹ 15 U.S.C. § 18; see also *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 21 (and cases cited therein).

⁵² See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9141, para. 21 (and cases cited therein).

⁵³ See *id.*

⁵⁴ See *id.* at 9142, para. 24.

⁵⁵ See, e.g., *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, 17582, para. 23 (2008) (*Sprint Nextel/Clearwire Order*); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17465, para. 33 (2008) (*Verizon Wireless/ALLTEL Order*).

⁵⁶ See, e.g., *Sprint Nextel/Clearwire Order*, 23 FCC Rcd at 17582, para. 23; *Verizon Wireless/ALLTEL Order*, 23 FCC Rcd at 17465, para. 33.

⁵⁷ 47 U.S.C. § 310(d).

⁵⁸ 47 U.S.C. § 308(b) ("All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station . . ."); see also *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5756, para. 190 (2007) (*AT&T/BellSouth Order*).

21. No commenter raised concerns regarding ATN's qualifications, and we find no evidence in the record that ATN is unqualified to hold Commission licenses and authorizations. To the contrary, there is evidence in the record that ATN has the financial, technical, and other qualifications that will benefit USVI consumers and businesses through: (1) expanding the service portfolio of the combined companies and enhancing customer service; (2) enhancing access to, and the reliability of, advanced communications services, which promote economic productivity and efficiency, employment, and access to education and healthcare; (3) providing a well-managed transition for customers, with no disruption to service, account, or billing arrangements; and (4) ensuring effective disaster recovery.⁵⁹ Applicants state that they will leverage ATN's experience and operational and technical expertise in serving rural and underserved markets (including 16 years of service in the USVI), its superior access to capital, and its ability to build on CFC's recent network upgrades and operating improvements in order to enhance and expand communication services provided by the Innovative Companies for the benefit of consumers in the USVI.⁶⁰ We therefore conclude that ATN satisfies the qualification requirements of section 310(d).

C. Compliance with the Act and Commission Rules and Policies

22. As noted above, for the proposed transaction to be in the public interest, it must be in compliance with the Act, other applicable statutes, and the Commission's rules and policies. We did not receive any comments regarding Applicants' statutory and regulatory compliance. We find that the proposed transaction will not violate any statutory provision or Commission rule or policy, nor would the transaction frustrate or impair the objectives or implementation of the Act or related statutes.⁶¹

D. Potential Public Interest Harms and Benefits

23. In this section, we consider any potential public interest harms and benefits arising from the proposed transaction. Although there is geographical overlap between the mobile wireless networks of ATN and the Innovative Companies in the USVI, we find that the proposed transaction is unlikely to result in any public interest harms. Moreover, we find that the proposed transaction will create a stronger competitor to the leading USVI mobile wireless providers. Further, as discussed below, we find that the proposed transaction is likely to result in tangible benefits for consumers through ATN's planned improvement in broadband service and investment in the USVI. As a result, we conclude that, on balance, the transaction's potential public interest benefits outweigh any potential public interest harms.

1. Defining the Relevant Product and Geographic Market

24. As stated above, the Commission considers how a transaction affects competition by defining the relevant product and geographic market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition, and the efficiencies that may result from the transaction. Although ATN and the Innovative Companies have no overlap of wireline assets, they do have overlapping commercial mobile wireless networks providing mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services), which is the relevant product market for purposes of the Commission's competitive

⁵⁹ Public Interest Statement at ii-iii.

⁶⁰ *Id.* at ii.

⁶¹ Post-closing, ATN (through its ownership and control of Vitelco) will be subject to the specific federal high-cost universal service obligations that the Commission will adopt in the Connect America Fund (CAF) proceeding. In the *December 2014 Connect America Order*, the Commission concluded that it would adopt tailored service obligations for each of the non-contiguous carriers like Vitelco that elected to continue to receive frozen support amounts for CAF Phase II in lieu of the offer of model-based support. See Letter from Russell M. Blau, Counsel to Virgin Islands Telephone Corporation d/b/a Innovative Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 29, 2014); *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15661-63, paras. 45-49 (2014) (*December 2014 Connect America Order*).

analysis.⁶² With regard to the relevant geographic market, Applicants contend that the geographic market for mobile wireless voice and data services is local and defined in terms of cellular market areas (CMAs).⁶³ Consistent with the Commission's decision in the *AT&T-Centennial Order*, we find that the relevant geographic market is the USVI local market for purposes of the Commission's analysis of the transaction's competitive effects in the USVI mobile voice and data product market.⁶⁴

2. Potential Public Interest Harms

25. Horizontal transactions such as the proposed transaction, in which rival firms in the same market are combining, raise potential competitive concerns when the merged entity has the incentive and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.⁶⁵ In addition, in order for a proposed transaction to have vertical effects on competition, one of the parties or its competitors must currently provide, or be very likely to provide, goods or services to the other or its competitors.⁶⁶ Based on our competitive evaluation, we find that the likelihood of horizontal competitive harm is low, and we find that there are no anticompetitive vertical effects arising from the proposed transaction. We further find, as set out below, that the transaction is unlikely to have adverse competitive effects on the provision of communication services in the USVI.

26. *Discussion.* Applicants state that ATN does not offer local exchange, exchange access, interexchange, wireline broadband, or MVPD service in the USVI, and that there are no overlaps or anticompetitive effects from the proposed transaction for these services.⁶⁷ Since ATN and its subsidiaries currently do not provide wireline services in the USVI, we note that the proposed transaction poses neither horizontal nor vertical concerns with regard to wireline services.

27. Applicants maintain that ATN, through its USVI operating affiliate, Choice, presently offers limited, low-speed, fixed wireless broadband service in the Vitelco territory, but ATN states that it has put on hold all plans to expand and upgrade its fixed wireless network.⁶⁸ Applicants assert that ATN

⁶² See, e.g., *Applications of AT&T Inc., E.N.M.R. Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5115, para. 18 (2015) (*AT&T-Plateau Wireless Order*); see also *Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13932 para. 37 (2009) (*AT&T-Centennial Order*).

⁶³ Public Interest Statement at 34 (citing *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133, 6222, para. 227 (2014), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015) (*Mobile Spectrum Holdings Order*)).

⁶⁴ See *AT&T-Centennial Order*, 24 FCC Rcd at 13934 para. 42 (holding that “for Puerto Rico and the U.S. Virgin Islands, we find that the relevant geographic markets are not CMAs or CEAs. Instead, we find that Puerto Rico and the U.S. Virgin Islands are each a separate relevant geographic market.” (citation omitted)).

⁶⁵ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5114, para. 16; *Applications of Cricket License Company, LLC, et. al., Leap Wireless International, Inc., and AT&T Inc. for Consent To Transfer Control of Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2745-46, para. 21 (WTB, IB 2014) (*AT&T-Leap Order*).

⁶⁶ See *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4250, para. 27 (2011); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12367, para. 36 (2008).

⁶⁷ Public Interest Statement at 27.

⁶⁸ Public Interest Statement at 31.

is losing fixed wireless customers and primarily offered the service only to DSL customers who did not have access to Vitelco's HFC network.⁶⁹ Applicants state that Vitelco has now largely replaced DSL with an HFC network, thus eliminating demand for ATN's lower-speed fixed wireless service.⁷⁰ In addition to lagging demand for ATN's fixed wireless network, the Commission has determined in the context of the Charter-Time Warner Cable-Bright House transaction that fixed wireless broadband is not an effective competitive alternative to fixed HFC wireline BIAS service.⁷¹ We therefore find that eliminating ATN as a fixed wireless competitor to Vitelco would not have an anticompetitive impact on the provision of broadband in the USVI.

28. With regard to mobile wireless voice and data services, Applicants claim that the proposed transaction would create minimal horizontal effects in the USVI.⁷² Applicants contend that "Choice and VCI have fewer than 5,000 customers each and hold small market shares of approximately eight and seven percent, respectively, for a combined total market share of approximately 10-15 percent."⁷³ Applicants further contend that AT&T serves over half the mobile wireless subscribers in the USVI⁷⁴ and has deployed an advanced wireless network using long-term evolution (LTE) technology throughout the USVI.⁷⁵ Applicants claim that Sprint is the second largest mobile wireless provider in the USVI and also has deployed an LTE network.⁷⁶ Applicants estimate that AT&T, Sprint, and the Sprint MVNOs have at least an 85 percent mobile wireless market share in the USVI.⁷⁷ Applicants maintain that the spectrum aggregation implicated by the proposed transaction would not trigger either a case-by-case review of the combined company's overall spectrum holdings or enhanced scrutiny of below-1-GHz spectrum aggregation issues.⁷⁸

29. The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both, and thereby could lead to competitive harm.⁷⁹ To help identify potential competitive concerns, initially we apply a two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, then we

⁶⁹ Public Interest Statement at 30.

⁷⁰ *Id.* Applicants state that 99.9 percent of the households in the USVI will be able to receive service over Vitelco's completed HFC network, and Vitelco is in the process of connecting individual households and businesses to the HFC network backbone as part of its ongoing migration. Vitelco expects to complete this process for residential customers in 2016. March 10 Supplement at 6.

⁷¹ See *Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 16-59, at n.154 (fixed wireless service "currently faces limitations on data usage, speeds, higher prices and availability.").

⁷² Public Interest Statement at 33.

⁷³ *Id.* at 25.

⁷⁴ *Id.* at 39.

⁷⁵ *Id.* at 24.

⁷⁶ *Id.* at 24. Applicants also claim that a number of mobile virtual network operators (MVNOs) using Sprint's network serve wireless subscribers in the USVI (e.g., Boost Mobile, Tracfone, and Virgin Mobile). *Id.* at 24-25.

⁷⁷ *Id.* at 24-25.

⁷⁸ *Id.* at 36.

⁷⁹ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

apply enhanced factor review.⁸⁰ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) and the change in the HHI.⁸¹ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁸² Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.⁸³

30. ATN/Choice currently holds 115 megahertz to 134 megahertz of spectrum in the USVI, and serves approximately 4,800 customers.⁸⁴ As a result of the proposed transaction, the combined company would increase its spectrum holdings that are suitable and available for the provision of mobile wireless telephony/broadband services to a maximum of 189 megahertz and would serve under 9,300 customers approximately.⁸⁵ In our application of the two-part screen, we note that neither the HHI screen nor the total spectrum screen are triggered by the proposed transaction.⁸⁶ Further, we note that the proposed transaction does not implicate enhanced factor review, as post-transaction, the combined entity would not hold more than one-third, or more than 45 megahertz, of spectrum below 1 GHz.⁸⁷ In addition, we find no particular factor that would lead us to undertake further competitive review of the proposed transaction. We find therefore that the likelihood of competitive harm as a result of the proposed transaction is low.

⁸⁰ See, e.g., *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6240, paras. 286-88; *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13065-66, para. 23 (2015) (*AT&T-Club 42 Order*); *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁸¹ The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24 n.82; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 n.140.

⁸² See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para.23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁸³ See, e.g., *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6143, 6167-68, paras. 17, 67; *AT&T-Club 42 Order*, 30 FCC Rcd at 13062-63, para. 16; *AT&T-Leap Order*, 29 FCC Rcd at 2745-46, para. 21.

⁸⁴ Public Interest Statement at 25; Lead Application, Attach. 6: Spectrum Aggregation Analysis.

⁸⁵ Public Interest Statement at 25, 37, Table 2; Lead Application, Attach. 6: Spectrum Aggregation Analysis.

⁸⁶ We derive market shares and HHIs from our analysis of data compiled in our June 2015 Numbering Resource Utilization and Forecast and Local Number Portability database, and spectrum holdings from our licensing databases and the Applications. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98. Post-transaction, the combined entity’s total spectrum holdings would range from 170 megahertz to 189 megahertz across the two Cellular Market Areas (CMAs): CMA 730 (Virgin Islands 1 – St. Thomas) and CMA 731 (Virgin Islands 2 – St. Croix). Public Interest Statement at 37, Table 2.

⁸⁷ The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, and approximately one-third of 134 megahertz is 45 megahertz. *Mobile Spectrum Holdings Order*, 29 FCC Rcd at 6156-57, 6240, paras. 46, 286-88. As a result of the proposed transaction, the combined entity would hold 25 megahertz of below-1-GHz spectrum, well below our threshold of 45 megahertz.

3. Potential Public Interest Benefits

31. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁸⁸ After a review of the record in this proceeding, we find several public interest benefits likely to result from the proposed transaction, including ATN's planned improvement of its broadband service in the USVI. Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.⁸⁹ The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.⁹⁰ That is, the claimed benefit must be likely to occur as a result of the transaction and unlikely to be realized without the transaction or by a practical alternative that would raise fewer competitive concerns than the proposed transaction.⁹¹ Second, each claimed benefit must be verifiable.⁹² Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they have the burden of providing sufficient evidence to support each claimed benefit to enable us to verify its likelihood and magnitude.⁹³ We will discount or dismiss speculative benefits that we cannot verify. Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.⁹⁴ Third, "the magnitude of benefits must be calculated net of the cost of achieving them."⁹⁵ Fourth, benefits must flow through to consumers, and not inure solely to the benefit of the company.⁹⁶ For example, we will more likely find marginal cost reductions to be cognizable than reductions in fixed costs because reductions in marginal costs are more likely to result in lower prices for consumers.⁹⁷

32. The Commission applies a "sliding scale approach" to evaluating benefit claims.⁹⁸ Under this sliding scale approach, where potential harms appear "both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise

⁸⁸ See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43; *AT&T-Leap Order*, 29 FCC Rcd at 2792-93, para. 130.

⁸⁹ See, e.g., *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent To Assign Licenses to the Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10468, para. 86 (2013) (*Alaska Wireless Order*); see also *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131.

⁹⁰ See, e.g., *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 273; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁹¹ *DOJ/FTC Horizontal Merger Guidelines* § 10 at 30 & n.13 (stating that "the agencies will not deem efficiencies to be merger-specific if they could be attained by practical alternatives that mitigate competitive concerns, such as divestiture or licensing"). Cf. *Alaska Wireless Order*, 28 FCC Rcd at 10467, para. 85.

⁹² See, e.g., *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 274; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁹³ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁹⁴ See, e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁹⁵ *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, para. 275.

⁹⁶ *Id.*

⁹⁷ See e.g., *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁹⁸ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9238, para. 276.

demand.”⁹⁹ Conversely, where potential harms appear unlikely or less likely and less substantial, as is the case here, the Commission will accept a lesser showing of claimed benefits.¹⁰⁰

33. Applicants claim that the proposed transaction would result in a number of verifiable, transaction-specific public interest benefits. When considering the potential public interest benefits, Applicants ask that the Commission consider the unique aspects of the USVI, including their small size (both in terms of land area and population) and the facts that they are geographically discontinuous, economically disadvantaged, and have severe weather and challenging and varied terrain.¹⁰¹ Applicants claim that the proposed transaction would allow the combined entity, with its substantial expertise,¹⁰² to offer robust services and a variety of service bundles to USVI consumers and would lead to better customer service.¹⁰³ Applicants further contend that the economies of scale and the combination of spectrum gained from the proposed transaction would allow the combined entity to provide competitive mobile data speeds, improved quality of service, an improved device portfolio, and a multiscreen content experience.¹⁰⁴ In addition, Applicants contend that given ATN’s strong balance sheet, ATN plans to continue investing in the networks and expand access to, and the reliability of, advanced telecommunications in the USVI.¹⁰⁵ Further, Applicants claim that the proposed transaction will be “seamless and transparent to customers.”¹⁰⁶ Applicants also assert that the proposed transaction will enhance competition in the USVI mobile wireless marketplace through the combination of Choice’s and VCI’s operations and customers and the deployment of a new 4G network, which it expects to be completed within one year of closing.¹⁰⁷

34. *Discussion.* We have reviewed the Applicants’ asserted benefits, as well as their responses to our requests for additional information and documents regarding the potential public interest benefits of the proposed transaction. We find that the record provides general support for the Applicants’ contentions that the proposed transaction would result in some public interest benefits.

35. As noted above, the USVI are small in population, geographically discontinuous, remote, have challenging terrain and weather, and are economically disadvantaged.¹⁰⁸ We find nothing in the record leading us to conclude that ATN will deviate from its history of serving island-based and underserved markets with local management and a long-term investment strategy.¹⁰⁹ In addition, we find

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ Public Interest Statement at 15.

¹⁰² *Id.* at 16-17.

¹⁰³ *Id.* at 19-20.

¹⁰⁴ *Id.* at 19.

¹⁰⁵ *Id.* at 18-19, 21.

¹⁰⁶ *Id.* at 22.

¹⁰⁷ *Id.* at 24, 26, 33. Applicants contend that currently they do not offer 4G mobile wireless services, instead relying on 3G EVDO and 3G HSPA+ technologies for data and UMTS and 1x CDMA technologies for voice services. *Id.* at 25. Applicants claim that “[u]sing a combination of VCI’s below 1 GHz spectrum and Choice’s above 1 GHz spectrum, the combined company will be able to offer enhanced low-band geographic coverage and improved in-building penetration with the high capacity and throughput speeds facilitated by high-band spectrum resources.” *Id.* at 26-27.

¹⁰⁸ See *supra* para. 33.

¹⁰⁹ Public Interest Statement at 2. (“ATN is an experienced carrier with substantial expertise in operating facilities-based communications networks to provide wireline, wireless, subscription television, and Internet access services in the U.S. Virgin Islands, Aruba, Bermuda, and Guyana, as well as remote and underserved areas on the U.S. mainland.”). *Id.* at 16-18. The Applicants note the “varied and challenging terrain, marine climate, and seasonal

(continued....)

nothing in the record to contradict Applicants' contentions that the proposed transaction will increase ATN's incentives to offer a strong and comprehensive services portfolio, enhance customer service, improve connectivity, and establish a well-managed transition for customers.¹¹⁰

36. ATN represents that it plans to improve the operations of the Innovative Companies and invest in the USVI network.¹¹¹ We expect that the combined company will have greater purchasing power¹¹² and economies of scale post-consummation, which we find likely to be beneficial with respect to negotiations with vendors for equipment, software, and video programming.¹¹³ Further, in light of the limited market presence currently held by the two companies, we expect that the proposed transaction likely will enhance competition in the USVI mobile wireless voice and data market by creating a stronger mobile competitor through the combination of Choice's and VCI's networks, customers, and spectrum, and the combined company's planned deployment of a new 4G network.¹¹⁴ We expect that the combined entity potentially will be able to recognize economies of scale that likely will enable more cost-effective mobile wireless operations and provide the customer base and spectrum resources needed to warrant ATN's deployment of a new 4G mobile network in the USVI.¹¹⁵ Customers in the USVI are likely to benefit from an additional choice resulting from a high quality, more robust 4G network. We are persuaded, after careful consideration of the record, that the proposed transaction will facilitate the combined company's efforts to improve broadband and other services to its USVI consumers. For these reasons, we find that the transaction is likely to result in some public interest benefits to USVI consumers, thereby serving the public interest.

IV. CONCLUSION

37. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. We have reviewed the

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hurricanes and tropical storms make it expensive and difficult to design, build, and maintain outdoor facilities, and maintain consistent service quality across all geographic service areas in island markets." *Id.* at 16. According to Applicants, they will be able to leverage the expertise of ATN's international network team, which has more than 15 years of disaster planning and recovery experience in the Caribbean and Bermuda and focuses on a combination of network resiliency and advanced planning to reduce storm-related disruptions to the greatest extent feasible. *Id.* at 23.

¹¹⁰ *Id.* at 2.

¹¹¹ According to Applicants, due to "rough topography, extreme heat and humidity, the salt air, frequent tropical storms, and electrical grid issues, as well as the extraordinary costs associated with transporting goods and technically skilled employees to and between the four scattered, primary islands that comprise the USVI, ATN anticipates that it will incur substantial costs operating, maintaining, and further expanding and upgrading the HFC network." March 10 Supplement at 4. ATN expects capital expenditures on the HFC network for 2016-17 to be generally in line with CFC's projected CAF Phase II capital expenditures for the network. *Id.* In addition, over the next five years, ATN will support Vitelco's planned capital expenditures to upgrade and increase the on-island and off-island transmission capacity of the HFC network; upgrade and enhance the network's IP core; diversify the network to enhance reliability; extend the network to new customers to provide broadband speeds, and continue plant replacement. *Id.* at 5.

¹¹² Public Interest Statement at 18 ("As part of ATN's consolidated businesses, the Innovative Companies will benefit from improved cash flow and access to capital on favorable terms."). Applicants note that as "of the date of ATN's most recent public financial statements, ATN had approximately \$391.8 million in cash and cash equivalents, and no borrowings under its existing \$225 million credit facility." *Id.*

¹¹³ *Id.* at 24. According to Applicants, they will be "better positioned to negotiate attractive and affordable television programming for USVI consumers and businesses, as ATN's scale across the Caribbean and Bermuda markets is potentially more attractive to programmers." *Id.*

¹¹⁴ *Id.* at 24.

¹¹⁵ *Id.* at 26.

Applicants' initial public interest statement, as well as their responses to our requests for additional information, and we conclude Applicants have shown that granting the transfer of control applications serves the public interest. Based on our careful review of the record, we find that the proposed transaction is likely to result in some public interest benefits, including the likely improvement of local network facilities and broadband services in the USVI, and we find that the transaction is unlikely to result in any significant public interest harms. Accordingly, we grant the proposed transfer of control applications.

V. ORDERING CLAUSES

38. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i)-(j), 5(c), 214, 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 155(c), 214, 303(r), 309, 310(d), and sections 0.51, 0.61, 0.91, 0.131, 0.261, 0.283, 0.291, and 0.331 of the Commission's Rules, 47 CFR §§ 0.51, 0.61, 0.91, 0.131, 0.261, 0.283, 0.291, and 0.331, the applications to transfer control from CFC to ATN of domestic and international section 214 authorizations, wireless licenses, and cable television relay service station licenses held by the Innovative Companies, and listed in Appendix A, ARE GRANTED.

39. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), that this Memorandum Opinion and Order IS EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, or applications for review under section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within thirty days of the date of public notice, i.e., within thirty days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief, Wireline Competition Bureau

Mindel De La Torre
Chief, International Bureau

William T. Lake
Chief, Media Bureau

Jon Wilkins
Chief, Wireless Telecommunications Bureau

APPENDIX A

SECTION 214 AUTHORIZATIONS

A. International

The applications for consent to the transfer of control of certain international section 214 authorizations are granted.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20151030-00254	DTR Holdings LLC	ITC-214-19990330-00206
ITC-T/C-20151030-00255	Vitelcom Cellular, Inc. d/b/a Innovative Wireless	ITC-214-19930312-00048 ITC-214-19990330-00207

B. Domestic

The application for approval to transfer control of domestic section 214 authority held by Innovative Long Distance, Inc. and Virgin Islands Telephone Corporation is granted.

SECTION 310(d) APPLICATIONS

The applications for consent to the assignment of licenses under section 310(d) of the Act are granted.

A. Wireless Authorizations

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0007004175	Virgin Islands Telephone Corporation	KNKI943
0007004176	Vitelcom Cellular, Inc.	KNKN845

PART 78 -- CABLE TELEVISION RELAY SERVICES (CARS)

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
20151110AB-09	Innovative Cable TV St. Thomas	WHZ-442
20151110AC-09	Innovative Cable TV St. Thomas	WLY-863
20151110AD-09	Innovative Cable TV St. Thomas	WLY-864
20151110AE-09	Innovative Cable TV St. Thomas	WLY-865
20151110AF-09	Innovative Cable TV St. Thomas	WLY-866
20151110AG-09	ICC TV, Inc.	WLY-875
20151110AH-09	ICC TV, Inc.	WLY-876

The Applicants also seek consent to transfer control of antenna structure registration 1018421 held by Caribbean Communications Corporation, File No. A0022081, which is granted.